IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL
Writ Petition No. 1458 of 2002 (S/B)

Dayal Singh aged 41 years
S/o Late Sri Pratap Singh
R/o Malla Krishnapur, Tallital
Nainital, Uttaranchal Petitioner

Versus

1. Union of India through Secretary Defence,
New Delhi

2. Chief Engineer, M.E.S. Bareilly Zone
Sarvatra Bhawan, Station Road,
Bareilly Cantt. – 243001

3. Engineer in Chief's Branch / EIC (4) Army Hqrs.,
Kashmir House, DHQPO,
New Delhi – 110 011

4. Chief Engineer (EIC2) Hqrs.,
Central Command, Lucknow-2 … Respondents

Sri M.C. Pandey, learned counsel for the petitioner.
Sri Vikas Pandey, learned Standing Counsel (Central Govt.) for the respondents.

Hon'ble B.C. Kandpal, J.

By way of this Writ Petition, a direction has been sought in the nature of certiorari by quashing the cancellation order dated 10.07.2002. A direction has also been sought in the nature of mandamus commanding the respondents to allow the petitioner to join his duties in the post of Chowkidar in compliance of the letter dated 30.05.2002 which has been filed as annexure-18 to this writ petition.

Brief facts giving rise to this writ petition are that Pratap Singh father of the petitioner while serving under the Garrison Engineer (MES) Ranikhet died on 21.09.1985. Pratap Singh was working as Pipe Fitter in the Department at the time of his death. The age of he petitioner was 24 years and he was

unemployed and totally dependent on his father. Mother of the petitioner was pre-deceased his father. After the death of Pratap Singh, his unmarried sister was left without any means of livelihood. Hence, he moved application for appointment under the Dying in Harness Rule. The board of Officers to assess the suitability of the petitioner for his employment in M.E.S. Department was constituted by the Garrison Engineer on 16.12.1985 as is evident from annexure-1 to the writ petition.

The respondents turned down the request of the petitioner on the ground that he had passed intermediate examination without English subject vide letter dated 20.09.1986 and asked the petitioner by the same order to furnish his willingness to accept the lower post. The petitioner in compliance of the aforesaid letter submitted his willingness to accept the lower post to serve anywhere in India.

Subsequently, the request of the petition was again turned down on the ground that the elder brother of the petitioner himself have been employed anywhere, hence, he is not entitle for any job. Thereafter, the petitioner submitted an application on 06.05.1987 clarifying that his elder brother was not given employment under the Dying in Harness Rules nor he was supporting the petitioner and his sister after the death of their father, Pratap Singh because he was living separately. Sri Harish Singh, elder brother of Dayal Singh submitted undertaking to this effect before the respondents.

As per the writ petition, Garrison Engineer wrote a letter on 01.08.1988 to Command Works Engineer, Pithoragarh recommending appointment of the petitioner in the post of Mazdoor/Chowkidar/Peon under the Dying in Harness Rules as is evident from the annexure-6 this writ petition.

The Assistant Garrison engineer vide letter dated 31.03.1989 informed the petitioner that he can not be considered for employment due to non-availability of the vacancy against the fixed quota and assured that in future his case will be considered.

The petitioner has further averred that the respondents again considered the application of the petitioner for his appointment under the Dying in Harness Rules and required the petitioner to furnish photocopies of the document. The petitioner in compliance of the letter submitted the document but the respondents again rejected the appointment of the petitioner under the Dying in Harness Rules vide letter dated 13.08.1991 in an arbitrary manner. The petitioner again represented the matter but the respondents vide letter dated 28.09.1995 again rejected the claim of the petitioner for the appointment.

The petition further reveals that the respondents again vide letter dated 15.11.1996 required the petitioner to submit the document afresh for reconsideration of his case under the Dying in Harness Rules. The petitioner complied with the letter and submitted the required documents. Thereafter, the petitioner received a letter on 19.05.1998 requiring his willingness to accept the post of Safaiwala under the compassionate ground as some vacancies of the said post were available. The petitioner submitted his willingness and lastly he received a letter from the office of Chief Engineer Bareilly Zone on 30.05.2002 as an offer of appointment.

It also reveals from the writ petitioner that the Command Works Engineer vide letter dated 19.01.2002 had also issued a letter to Garrison Engineer, Ranikhet requiring him to issue the appointment order to the petitioner. Copy this letter has been annexed as annexure-19 to this writ petition and the copy

received by the petitioner's name shows an endorsement that he was advised to contact GE Ranikhet for his appointment. The petitioner was surprised to receive the letter again on 10.07.2002 from the office of Chief Engineer, Bareilly inforiming that his appointment has been cancelled in to. Hence, this writ petition.

The counter affidavit has been filed by the respondents and it has been pleaded that the petitioner had infact never been given ay appointment under the Dying in Harness Rules. The correspondences took place with regard to his appointment under the compassionate ground but ultimately it was found by the higher authorities that it was not possible to give appointment to the petitioner under the Dying in Harness Rules. Therefore, his case was rejected.

Heard learned counsel for the parties and perused the record.

It appears to me that some decisions of the Hon'ble Apex Court have been quoted by the respondents authority in rejecting the claim of the petitioner. But I am of the view that in all these rulings, nowhere the Hon'ble Apex Court has held that once the case of the petitioner has been considered and accepted after active consideration, then the same cannot be rejected on flimsy and arbitrary ground.

Annexure-18 is a document which has been filed alongwith the writ petition and it shows that the matter of the petitioner was under active consideration under the heading "COMPASSIONATE APPOINTMENT TO THE DEPENDENTS OF DECEASED GOVERNMEN SERVANT WHO DIED IN HARNESS IN RELAXATION OF NORMAL RECRUITMENT PROCEDURE AGAINST 5% DR WASTAGE VACANCIES DURING THE GIVEN YEAR".

This title shows that the appointment of the petitioner was being considered against 5% fixed quota. Para 4,5 and 6 of this letter reads as under:

"4. The vacancy should be filled strictly in accordance with the recruitment rules and in terms of AI I/S60. Please make sure that a minimum 30 days period should be allowed to the candidate to join his/her duty.

5. In terms of Govt. of India, Min of Pers, PG & Pension (DOPT) OM No. 14014/16/99-Estt (D) dt. 20 Dec. 99, circulated vide this HQS. Letter No. 813007/POL/229/EIC (I) dt. 29 Apr. 2000, the individual /applicant is required to give an undertaking in writing that this compassionate appointment is subject to the condition that he will maintain properly the other family members, who were dependent on the deceased Govt. servant in question and in case it is proved subsequently viz at any time that the family members (S) is / are being neglected or not being looked after / maintained properly by him, his appointment may be terminated forthwith without any notice. It would be incorporated as one of the additional condition in the Offer of Appointment and the said undertaking will be obtained before allowing him to join duty.

6. It should be noted that the appointment is to be made provisional, subject to the verification of Character and antecedents through the concerned District Magistrate. The instructions contained in AG's Br, Army HQS. Letter No. 79160/RR/P/EIC(I)/ dt. 19 Jul. 2000, copy sent to you vide this HQS. Letter No. 813007/POL/Corr/755/EIC (I) dated 11 Aug. 2000 should be strictly be adhered to."

On perusal of the aforesaid paragraph, it clearly shows that after the active consideration by the authority concerned, it was decided that an offer of appointment should be given to the petitioner. Again from the perusal of annexure-19 to this writ

petition, it is also a letter issued by the Commander Works Engineer, Ranikhet to take action for issuing appointment order to Dayal Singh and this letter reads as follows:-

"Tele: Mil: 5239	Regd / SDS
	Headquarters
11083/DS/17/EIC (2)	Commander Works Engr. (Hills)
Garrison Engineer	Pithoragarh.
Ranikhet	19th Jun 2002

COMPASSIONATE APPOINTMENT TO THE DEPENDENTS OF DECEASED GOVT. SERVANTS WHO DIED IN HARNESS IN RELAXATION OF NORMAL RECRUITMENT PROCEDURE AGAINST 5% DR WASTAGE VACANCIES DURING THE GIVEN YEAR.

1. Reference Chief Engineer Bareilly Zone Bareilly letter No. 815502/RR/49/EIC(2) dt. 30 May 2002.

2. Please confirm receipt of above quoted letter and take action accordingly to issue appointment order to Shri Dayal Singh S/o Late Shri Pratap Singh, Ex-Pipe Fitter, MES-456086.

3. The date of birth and other relevant documents of the individual should be checked before offering appointment to him/her.

4. Also ensure action on para 3 to 8 of Chief Engineer Bareilly Zone Bareilly letter cited at reference.

5. Completion report should reach this H.Q. by 30 Jun. 2002.

6. Please act.

Sd/-Illegible
(A K Bajaj)
SE
CWE (Hills)
Pithoragarh

Copy to :-

1.	Chief Engineer Bareilly Zone Bareilly Regd	-For info w.r.t. their HQ. Letter mentioned at reference.
2.	Shri Dayal Singh S/o Late Sh. Pratap Singh Ex-P/Fitter Near MES Qtr. No. 3 Bhawali Road, Nainital (U.P.)"	-Your are advised to contact GE Ranikhet for your appointment.

Perusal of this letter also makes the picture clear that the petitioner was advised to contact Garrison Engineer, Ranikhet for his appointment.

Therefore, it is quite clear that the authorities concerned after deep consideration come to the conclusion that the appointment should be given to the petitioner under the Dying in Harness Rules.

It is also to be kept in mind since very beginning, the authorities concerned had been considering the case of the petitioner under the Dying in Harness Rules against the fixed quota of 5% as is clear from the record as has been discussed by me in the foregoing paragraph. Sudden rejection of the case of the petitioner by the authorities concerned shows an arbitrariness on their part. In this regard, it would again be relevant to reproduce paragraph 5 of the annexure-22 which is a letter dated 07.08.2002 issued by the Chief Engineer Bareilly Zone issued to the petitioner which is as follows.

"5. The Board of Officers at Army Headquarters after taking into account each aspect referred to above has considered your case alongwith other candidates. However, due to more deserving cases and few vacancies available, your case was not recommended by the Board of Officers for appointment on compassionate ground. In view of this, the

competent Authority is of the view that your case does not deserve employment assistance on compassionate grounds."

The decision of the Board Officers at Army Headquarters appears to be without any basis. It has not been made clear that in fact which were more deserving cases then the case of the petitioner. As far as the availability of the vacancy; is concerned, it is quite clear from the perusal of the aforesaid paragraph that the vacancies were available. Therefore, I do not find any justification for rejecting the case of the petitioner unless the authorities concerned had made it clear in the aforesaid letter that who were more deserving candidates than the petitioner be given appointment and it is not made clear as to what was the criteria adopted by them in this regard. As I have already observed in view of the aforesaid letter, it is quite clear that the vacancies were available in the Department against which the petitioner could have been appointed.

The Hon'ble Supreme Court ahs observed in plethora of decisions that the appointment on compassionate ground can be made if the vacancy is available for that purpose. In the present case, it is not the case of the respondents that the vacancies were not available. Therefore, to my mind that the decision of the respondents in not providing the job to the petitioner under the compassionate ground is arbitrary, harsh and against the settled principle of law.

In the result, the writ petition is allowed.

The respondents are directed to consider the case of the petitioner for providing him a job under the Dying in Harness Rules as and when the vacancy exists in the Department.

(B.C. Kandpal, J.)

15th June, 2005
Shiv